

DOCKET NO. 2020-63-E

IN RE: Bridgestone Americas Tire Operations, LLC,
Petitioner,
v.
Dominion Energy South Carolina, Inc.
Respondent.

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**MOTION TO STRIKE PORTIONS
OF DOMINION ENERGY SOUTH
CAROLINA, INC.’S PREFILED
DIRECT TESTIMONY**

ELECTRONICALLY FILED - 2020 July 17 5:12 PM - SCPSC - Docket # 2020-63-E - Page 1 of 21

Testimony Concerning Settlement Negotiations Is Inadmissible and Should be Struck.

DESC witness John Raftery has submitted prefiled direct testimony in which he concedes that the parties worked informally to resolve their dispute.¹ To demonstrate that the parties complied with the provisions of S.C. Code Ann. § 58-27-460(C), BATO witness Derrick Freeman will testify that BATO had made “every effort” to resolve its dispute with DESC.²

S.C. Code Ann. § 58-27-460(C) provides:

In the event of a dispute between an interconnection customer and the electrical utility on an issue relating to interconnection service, the parties first shall attempt to resolve the claim or dispute using any dispute resolution procedures provided for pursuant to the applicable interconnection standards promulgated by the commission. If the parties are unable to resolve such claim or dispute using those procedures, then either party may petition the commission for resolution of the dispute including, but not limited to, a determination of the appropriate terms and conditions for interconnection. The commission shall resolve such disputes within six months from the filing of the petition in accordance with the terms of applicable state and federal law.

It is sufficient for the Petitioner to demonstrate its attempt at resolving the dispute as a condition precedent to seeking relief from the Commission. DESC need only to have admitted or denied that BATO satisfied this condition precedent. However, DESC witness Raftery’s testimony exceeds the level of proof required by § 58-27-460(C). Rather than simply demonstrate compliance with the statute, witness Raftery takes the opportunity to allege considerable detail of the parties’ negotiations. His testimony is inadmissible.

The Commission’s rules and regulations expressly provide that “[t]he rules of evidence applied in civil cases in the Court of Common Pleas shall be followed.” S.C. Code Regs. 103-

¹ Raftery direct testimony, Page 7, l. 20 – page 11, l. 11

² Freeman direct testimony. Page 7, ll. 8-10.

846(A). The South Carolina Court of Common Pleas adheres to the South Carolina Rules of Evidence. *See* SCRE 101 (rules “govern proceedings in the courts of South Carolina”).

Witness Raftery improperly proposes to testify in detail to settlement negotiations. Rule 408, SCRE, provides that conduct or statements made in compromise negotiations are not admissible “to prove liability for or invalidity of the claim or its amount.” Rule 408 contemplates that the parties must feel free to make certain assumptions for the purpose of settlement negotiations and that those statements are assumed by the author to be true only for the purpose of compromise negotiations. The rule codified the long-standing principle that evidence of conduct or statements made in compromise negotiations is not admissible. *Fesmire v. Digh*, 385 S.C. 296, 683 S.E.2d 803 (Ct. App. 2009). In addition to the Rule 408, SCRE objection, Witness Raftery’s testimony is offered to prove the fact of the matter asserted and is inadmissible hearsay. *Id.* In further violation of Rule 408, SCRE, Witness Raftery’s prefiled direct testimony purports to set out the positions of the Office of Regulatory Staff (“ORS”) articulated during confidential settlement negotiations as supportive of DESC’s positions in this docket.

In addition, witness Raftery’s testimony violates Rules 602 and 802, SCRE. Rule 602, SCRE provides that “[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.” Witness Raftery concedes that he was not present during the negotiations with ORS, testifying that “it is my understanding that BATO reached out to the ORS”³ and “that it is my understanding that the

³ Raftery prefiled direct page 8, ll. 20-21

ORS informed both parties of its position.”⁴ Witness Raftery has no personal knowledge of the matters asserted and is not competent to testify to the ORS’ statements, if the statements were ever made. Consequently, the testimony is inadmissible as a violation of Rule 602, SCRE.

Witness Raftery’s testimony is also hearsay. Rule 802, SCRE, declares that hearsay is inadmissible. Rule 801(c), SCRE defines hearsay as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Because DESC offers Witness Raftery’s testimony about the ORS’s alleged statement to prove the truth of the matter asserted—that BATO’s claim is invalid—this testimony is inadmissible.

Witness Raftery’s prefled direct testimony contains two additional hearsay statements when he proposes to testify as follows: “Likewise the ORS explained to both parties...it believed the operation of the Generating Facility falls within the jurisdiction of the South Carolina Standard”⁵ and “I was informed by the ORS...that the operation of the Generating Facility would be subject to the South Carolina standard.”⁶ The statements attributed to the ORS are hearsay, unreliable and violate Rules 408, 602 and 802, SCRE.

More important, both statements are incorrect. The ORS informed both parties at the conclusion of the settlement negotiations that it formed no opinion in this matter. The ORS wrote:

Contrary to the statements of Dominion Energy South Carolina (“DESC”), the South Carolina Office of Regulatory Staff (“ORS”) does not have the authority or jurisdiction to provide a binding opinion as to whether the Public Service Commission of South Carolina’s (“Commission”) South Carolina Generator

⁴ Raftery prefled direct page 9, l 22 – page 10, l. 2

⁵ Raftery prefled direct page 9, ll. 17 -21

⁶ Raftery prefled direct page 10, l. 21 – page 11, l. 2.

Interconnection Procedures (“SCGIP”) and the provisions of S.C. Code Ann. § 58-27-460(A)(1) apply to your client. Only the Commission can issue such a determination or finding. Additionally, ORS lacks the ability to provide a Letter of Opinion predicting how the Commission may interpret S.C. Code Ann. § 58-27-460(A)(1). Correspondence of Nanette S. Edwards dated September 27, 2019 attached hereto as Exhibit 1.

Consistent with Ms. Edwards’ correspondence quoted immediately above, the ORS has taken no position in this docket.

Witness Raftery’s prefiled direct testimony demonstrates the inherent unreliability of hearsay testimony. Mr. Raftery’s testimony is inadmissible and should be struck. Should the Commission determine that the testimony is admissible, Petitioner would request leave to supplement its testimony describing the concessions DESC was willing to make concerning waiver in negotiating with the Petitioner. The evidence would then demonstrate that it is disingenuous at best for DESC to now claim that it has no choice but to oppose such a waiver in order to prevent discriminatory treatment of other customers.

South Carolina Solar Business Alliance Letter is Inadmissible Hearsay and Should be Struck.

Witnesses Raftery and Xanthakos submitted prefiled direct testimony concerning a letter from South Carolina Solar Business Alliance (“SCSBA”), which is not a party to these proceedings, in violation of Rule 802, SCRE. Witness Raftery suggests that the South Carolina Solar Business Alliance (“SCSBA”) correspondence dated April 29, 2020, “simply reflects the belief that the South Carolina standard is meant to apply to exactly the type behind the meter generation at issue here.”⁷ Mr. Raftery mischaracterizes the SCSBA letter. The SCSBA applauds BATO for investment in cost effective clean energy resources but urges the Commission to do no harm in these proceedings. The

letter does not purport to support DESC's position. The SCSBA could not have anything supportive to say of DESC's labyrinthine and arbitrary interconnection procedures and with remarkable restraint, SCSBA fails to even mention DESC in its correspondence. Moreover, the SCBSA is no stranger to this Commission and if the SCSBA had an interest in promoting DESC's recalcitrance to permit solar development, the SCSBA could have intervened in the docket to resist BATO's solar development. The DESC testimony concerning the SCSBA correspondence is rank hearsay, is inadmissible and should be stricken.

However, if the Commission deems it appropriate to introduce hearsay testimony of the SCSBA, the Petitioner requests leave to supplement its testimony to introduce into evidence, the letter of the South Carolina Secretary of Commerce dated April 14, 2020, filed in the docket that date in which the Secretary states that it was the intent of the General Assembly to exclude onsite self-consuming system for the interconnection queue. Moreover, the Secretary correctly points out that DESC's position in this docket is arbitrary and has no apparent basis in law. The Secretary urges that as a longstanding South Carolina corporate citizen and job creator, BATO deserves the State's best effort to facilitate a prompt and favorable resolution to this matter and that the Petitioner should be permitted to operate its solar array subject to a final safety and security review.⁸

The Dominion Testimonies Contain Inadmissible Legal Conclusions and Should be Struck.

Portions of the prefiled direct testimonies offered by Mark C. Furtick, John H. Raftery, and Pandelis N. Xanthakos should be struck as they include legal conclusions from lay witnesses without personal knowledge. *See Carter v. Bryant*, 429 S.C. 298, 313, 838 S.E.2d 523, 531 (Ct.

⁷ Raftery prefiled direct page 4, 19 – page 5, l. 10. *See also* Raftery prefiled direct page 12, l. 20 – page 13, l. 3; Xanthakos direct testimony page 9, l. 16 – page 10, l. 2

App. 2020), *reh'g denied* (Feb. 20, 2020) (“[A]n opinion on the ultimate issue has to be ‘otherwise admissible,’ meaning in the context here that it must be helpful to the jury as required by Rule 702, SCRE, and satisfy the strictures of Rule 403, SCRE. The opinion here was not helpful to the jury because it stated a *legal conclusion and essentially told the jury what result to reach* on the [question of law].”) (emphasis added) (citing *Weinstein's Federal Evidence* § 704.04[2][01] (2nd ed. 2019)). Witnesses not offered as experts may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Rule 602, SCRE. Moreover, no witness may offer testimony interpreting or applying statutes and regulations. Rule 704, SCRE; *see also Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (S.C. 2003) (“In general, expert testimony on issues of law is inadmissible.”).

Witness Furtick has no personal knowledge and makes legal conclusions in his direct testimony as follows:

- “that bring the Generating Facility within the jurisdiction of the South Carolina Generator Interconnection Procedures, Forms, and Agreements (the ‘South Carolina Standard’).”⁹ This testimony states a legal conclusion as to the applicability of the interconnection procedures at issue.
- “Although I am not an attorney, it seems that BATO’s operation of the Generating Facility would now violate the Service Contract because the parties no longer have an agreement as to the measures required to ensure the reliability of DESC’s and BATO’s systems—specifically, BATO has reversed course on the prior agreement that the Generating Facility is subject to the South Carolina Standard.”¹⁰ This testimony is speculative and includes legal arguments and conclusions as to the Contract’s interpretation and applicability of the regulations at issue.

⁸ Correspondence of Robert M. Hitt, III dated April 14, 2020, attached hereto as Exhibit 2.

⁹ Furtick prefiled direct, page 2, l. 18-22.

¹⁰ Furtick prefiled direct, page 4, l. 19- page 5, l. 2.

- “Yes. Section 1.1.1 of the Procedures within the South Carolina Standard mandates that the South Carolina Standard governs ‘the interconnection and parallel operation of Generating Facilities with Utility Systems in South Carolina.’ (emphasis added). As explained in greater detail below, the Generating Facility fulfills both of these requirements. Despite this fact, BATO continues to argue that neither the Commission nor the Federal Energy Regulatory Commission (“FERC”) has jurisdiction over the Generating Facility.”¹¹ This testimony attempts to apply legal definitions from the regulations to reach a legal conclusion as to both jurisdiction for the State and Federal Standard.
- “It appears that BATO is simply advancing this novel argument to evade the entire South Carolina Standard—including its reliability measures and study requirements.”¹² This testimony is speculative and implies a legal conclusion as to applicability of the South Carolina Standard to the Generating Facility.
- “BATO attempts to contort the South Carolina Standard by implying the South Carolina Standard draws a distinction between a “series” connection and a ‘parallel’ connection. However, as discussed in greater detail by DESC Witness Xanthakos, this is simply another unsupported argument advanced by BATO to avoid its obligations under the South Carolina Standard. To be clear, the South Carolina Standard does not refer to the type of connection, but simply refers to parallel operation and interconnection as the thresholds for applicability. The Generating Facility clearly and unequivocally meets the threshold of ‘parallel operation’ required by the South Carolina Standard given that the Generating Facility is electrically tied to equipment supplied by power from DESC and the power from the Generating Facility will also be used to serve the same load, which results in a confluence of the power supplied by (i) DESC and (ii) the Generating Facility.”¹³ This testimony both defines and interprets regulatory terms of the regulation while using its own assertion of the facts to reach a legal conclusion regarding the issue before the Commission.
- “Clearly, these factors indicate that the Generating Facility is operating in parallel as contemplated by the South Carolina Standard, which ensures that the construction and operation of the Generating Facility is done in a safe, reliable manner that does not jeopardize the overall transmission system to which BATO is connected. To be clear, if the Generating Facility’s operation is not deemed as ‘parallel,’ then it is unclear how many—if any—generators in South Carolina would be subject to the South Carolina Standard given that they contain similar, if not identical, operating characteristics.”¹⁴ This testimony states the ultimate legal conclusion sought by DESC based on its own interpretation of the facts.

¹¹ Furtick prefiled direct, page 5, l. 6-12.

¹² Furtick prefiled direct, page 5, l. 18-20.

¹³ Furtick prefiled direct, page 6, l. 14- page 7, line 4.

¹⁴ Furtick prefiled direct, page 8, l. 3-10.

- “That position seems to imply that any generation that BATO, or any similarly-situated facility, adds ‘behind the meter’—even if it is electrically connected to equipment that receives power from the DESC system—could be arbitrarily ‘carved away’ from the transmission system to which it is connected and not be deemed as ‘interconnected’ under the South Carolina Standard.”¹⁵ This testimony speculates as to BATO’s position and states a legal conclusion as to the application of certain facts and regulatory terms.
- “From a technical perspective, the only way the Generating Facility would not be interconnected to the DESC system—aside from disconnecting the entire BATO facility from the DESC system—would be for the Generating Facility to disconnect from all equipment that is electrically connected to the DESC system.”¹⁶ This testimony interprets regulatory terms and asserts a legal conclusion that the Generating Facility is interconnected while masquerading as a “technical perspective.”
- “As such, the Generating Facility will be ‘interconnected’ to the DESC system as contemplated by the South Carolina Standard.”¹⁷ This testimony interprets a regulatory term and asserts the ultimate legal conclusion sought by DESC.

Witness Raftery has no personal knowledge and makes legal conclusions in his direct testimony as follows:

- “Section 1.1.1 of the Procedures in the South Carolina Standard mandate that the South Carolina Standard apply to ‘the interconnection and parallel operation of Generating Facilities with Utility Systems in South Carolina.’ (emphasis added). These requirements are echoed in the form Interconnection Agreement in the South Carolina Standard (the ‘Form IA’). Section 1.2 of the Commission-approved Form IA mandates that the terms and conditions therein are applicable when an ‘Interconnection Customer’s Generating Facility will interconnect with, and operate in parallel with, the Utility’s System.’ As such, the Generating Facility falls squarely within the jurisdiction of the South Carolina Standard because it will interconnect and operate in parallel with DESC’s system, as discussed in greater detail by DESC Witness Furtick and DESC Witness Xanthakos.”¹⁸ This testimony asserts legal conclusions as to the regulatory requirements of the South Carolina Standard and applies them to the facts at hand based on its own interpretation of the law.

¹⁵ Furtick prefired direct, page 8, l. 20- page 9, l. 2.

¹⁶ Furtick prefired direct, page 9, l. 3-6.

¹⁷ Furtick prefired direct, page 9, l. 11-12.

¹⁸ Raftery prefired direct, page 4, l. 6-17.

- “It is my testimony that the SCSBA’s letter simply reflects the belief that the South Carolina Standard is meant to apply to exactly the type of behind-the-meter, generation at issue here. The SCSBA’s request that the Commission ensure ‘a nondiscriminatory interconnection process that engenders fair access’ and that any such relief granted in favor of BATO ‘not impair or discriminate’ against other facilities currently in the queue simply echoes the spirit and express terms of the South Carolina Standard and DESC’s position in this docket.”¹⁹ This testimony speculates as to the correct legal interpretation of other offered testimony in this docket before stating that the witness’s testimony is legally consistent with the legal conclusion DESC seeks to obtain from the Commission.
- “No. The South Carolina Standard does not contain any such special accommodations for such generation. As discussed above, the South Carolina Standard provides language setting clear boundaries for its application to generation interconnecting to the DESC system and operating parallel to the same—regardless of whether such generation is placed ‘behind the meter.’”²⁰ This testimony asserts an interpretation of the South Carolina regulations and states the legal conclusion as to the issue before the Commission.
- “As such, DESC is required to follow the terms of not only the Electric Service Contract pursuant to which DESC supplies BATO with power, but also the South Carolina Standard prior to any such operation of the Generating Facility. The South Carolina Standard is mandatory and its requirements—including the requirements that subject the Generating Facility to the jurisdiction of the South Carolina Standard—cannot simply be ignored by DESC. Among these requirements, as explained in greater detail by DESC Witness Xanthakos, is the mandate that DESC administer its state interconnection queue in a non-discriminatory manner without providing special treatment to certain projects. By following the South Carolina Standard, DESC ensures the safety and reliability of not only the DESC system, but also BATO’s equipment and facility.”²¹ This testimony contains legal conclusions as to the interpretation of contractual provisions and the parties’ respective obligations, asserts an interpretation of the regulations, and states a legal conclusion regarding the jurisdiction of the Commission.
- “In short, BATO appears to lack an understanding of the fundamental principles of the South Carolina Standard essentially all generators on the DESC system, operating parallel thereto, are subject to the South Carolina Standard.”²² This testimony asserts a legal conclusion as to the bounds of the Commission’s jurisdiction and applicability of the regulations.

¹⁹ Raftery prefiled direct, page 5, l. 2-9.

²⁰ Raftery prefiled direct, page 5, l. 15-19.

²¹ Raftery prefiled direct, page 7, l. 5-16.

²² Raftery prefiled direct, page 8, l. 9-12.

- “There, the FERC has granted waivers where an ‘emergency situation or an unintentional error was involved.’ Neither of those are at issue here. The FERC also noted that a one-time waiver of the LGIP may be appropriate where ‘good cause for a waiver of limited scope exists, there are no undesirable consequences, and the resultant benefit to customers are evident.’ Applying the FERC’s standard to the similar waiver that BATO has requested here, the waiver violates each of these principles.”²³ This testimony contains a legal conclusion regarding the interpretation of FERC regulatory language.

Witness Xanthakos has no personal knowledge and makes legal conclusions in his direct testimony as follows:

- “Yes. I want to be very clear because this is an important, fundamental requirement of the South Carolina Standard. In approving the South Carolina Standard, the Commission recognized the need for the electric utilities in South Carolina to evaluate these projects to ensure the reliability of the Bulk Electric System. As such, the South Carolina Standard was intended to apply to precisely these types of industrial projects that operate in parallel to the DESC system.”²⁴ This testimony explicitly states the legal conclusion posed by the question that the regulations at issue apply to the Generating Facility as DESC claims and goes on to conclusively interpret the legal criteria and intent in the coverage of the regulation.
- “The Generating Facility meets the threshold requirements for applicability contained in Section 1.1.1 of the Procedures in the South Carolina Standard, which mandates that the South Carolina Standard apply to ‘the interconnection and parallel operation of Generating Facilities with Utility Systems in South Carolina.’ (emphasis added). As explained in more detail by DESC Witness Furtick, the Generating Facility will operate in parallel with the DESC system because the Generating Facility will serve the same load as the DESC transmission system. In this context, this means that the BATO facility will be served—simultaneously—by a confluence of power supplied by DESC and the Generating Facility. Because of this, the power supplied by the Generating Facility must necessarily operate within certain parameters to ensure that it does not adversely affect the BATO facility or the DESC system. The very goal of the South Carolina Standard is to ensure that such parallel operation is done in a safe, reliable manner in order to protect the DESC system. Likewise, the Generating Facility is interconnected to the DESC system given that the BATO facility is connected to the DESC transmission system and receives power from the same. The Generating Facility will not only be connected to the BATO facility but will also generate and supply power to the same. To arbitrarily designate a ‘behind-the-meter’

²³ Raftery prefiled direct, page 12, l. 8- page 14, l. 10.

²⁴ Xanthakos prefiled direct, page 4, l. 18- page 5, l. 2.

generator—especially a generator that serves the same load simultaneously with power supplied by DESC—as not being interconnected to the DESC system is simply incorrect. The analysis may be different if the BATO facility and the Generating Facility were not electrically connected in any way with the DESC system, but the evidence here time and again indicates that is not the case. Clearly, the Generating Facility falls squarely within the jurisdiction of the South Carolina Standard, as discussed in greater detail by DESC Witness Furtick.”²⁵ This testimony includes a full legal analysis of the application of certain facts to regulatory terms defined by the witness in stating the ultimate legal conclusion, including reliance on speculation and facts not based on personal knowledge.

- “No, I disagree completely. DESC Witness Furtick’s testimony accurately describes ‘parallel operation’ as when generation that is connected to the DESC system—directly or indirectly—is operated in a way that is able to influence the DESC system, even if momentarily. Although I do not agree with BATO’s position that the South Carolina Standard addresses the type of connection (i.e., parallel vs. series) rather than the mode of operation, I want to explain why—even if the South Carolina Standard only contemplated parallel connection rather than operation—BATO’s argument remains incorrect. To be clear, the Generating Facility is electrically connected in a parallel circuit rather than in a series circuit, as BATO suggests.”²⁶ This testimony attempts to define a regulatory term and apply that definition with other legal terms to state a legal conclusion as to the application of these terms to the facts.
- “Therefore, all generators and loads must ultimately be connected in parallel if the intent is for the BATO load to be served either simultaneously or without significant interruption from the two sources of power. Even if the South Carolina Standard addressed only parallel ‘connection’ rather than ‘operation,’ the Generating Facility would still fall within its jurisdiction.”²⁷ This testimony states the ultimate legal conclusion before the Commission, relying on speculation, facts not based on personal knowledge, and arbitrarily defined terms.
- “No, I certainly do not agree. I understand that the question of whether the Generating Facility would be FERC-jurisdictional if the South Carolina Standard did not apply is one that cannot ultimately be decided by the Commission, but it highlights the illogical nature of BATO’s argument. Put simply, BATO attempts to sidestep regulation by not only this Commission, but also by the FERC. This means that the Generating Facility—an almost 2 MW generator interconnected to and operating in parallel to the DESC system—could operate independent of any state or federal regulation and without the necessary studies and evaluations that would provide

²⁵ Xanthakos prefiled direct, page 5, l. 6- page 6, l. 9.

²⁶ Xanthakos prefiled direct, page 6, l. 16- page 7, l. 3.

²⁷ Xanthakos prefiled direct, page 8, l. 15-19.

assurance to DESC that the operation of such generator does not compromise the Bulk Electric System.”²⁸ This testimony is a response to a question suggesting DESC’s desired legal conclusion, speculates as to BATO’s motivation and actions, and asserts the legal conclusion as to FERC jurisdiction all while acknowledging it is the Commission which decides the application of South Carolina law and FERC which decides the application of federal law.

- “As such, if the Generating Facility is not subject to the South Carolina Standard, it must be subject to the small generator interconnection procedures established by the FERC. There are no other options unless BATO were to completely separate the load served by the Generating Facility from the DESC system.”²⁹ This testimony interprets the extent of both FERC and the Commission’s jurisdiction and attempts to speculate their application to the facts at hand in the alternative.

In addition to the foregoing portions of the direct testimonies, DESC offered surrebuttal testimonies of Mr. Furtick, Mr. Xanthakos, and Matthew J. Hammond in response to the rebuttal testimonies of BATO witnesses McGavran and Cannon. Portions of each of the surrebuttal testimonies filed by DESC include further legal conclusions offered by lay witnesses which are inadmissible under the rules of this Commission.

Witness Furtick makes impermissible legal conclusions in his surrebuttal testimony as follows:

- “I will explain that generators operating in parallel—whether industrial, behind-the-meter, residential rooftop solar, or utility-scale—are subject to and processed in accordance with the South Carolina Standard.”³⁰ This testimony impermissibly defines the legal question of the extent of applicability of the regulations.
- “The South Carolina Standard does not distinguish between ‘customer generation’ and ‘stand-by generation,’ just as it does not distinguish between a series connection or a parallel connection.”³¹ This testimony purports to interpret the extent of applicability of the regulations, a question of law for the Commission.

²⁸ Xanthakos prefiled direct, page 10, l. 8-17.

²⁹ Xanthakos prefiled direct, page 10, l. 19- page 11, l. 2.

³⁰ Furtick surrebuttal, page 1, l. 15- page 2, l. 3.

³¹ Furtick surrebuttal, page 3, l. 4-6.

- “[S]uch projects are not within the scope of the South Carolina Standard.”³² This testimony, again, attempts to define the scope and extent of the regulations for the Commission.
- “[T]he South Carolina Standard does not distinguish by resource...”³³ This testimony attempts to define the applicability and extent of the regulations for the Commission.
- “No, it certainly does not.”³⁴ This testimony is offered as a direct response to the call of the question soliciting a legal conclusion as to what is allowed by the regulations and is therefore an impermissible legal conclusion itself.
- “Regardless, nowhere does the South Carolina Standard permit DESC to allow a generator to operate in parallel based upon events on another part of the DESC system solely based on technical characteristics it may have in common with other facilities on the DESC system. The South Carolina Standard requires DESC to review each generator and the effects such generator would have on the DESC system prior to interconnection and parallel operation.”³⁵ This testimony includes a legal analysis of the extent of the regulations and their application to certain facts in stating the requirements of the regulations.
- “To be clear, this is a concept completely foreign to the South Carolina.”³⁶ This testimony attempts to define the parameters of the regulations and is impermissible legal interpretation.
- “The fundamental point is that the South Carolina Standard does not distinguish along those lines, but does require DESC to process all such generators—of whatever size or configuration—that intend to interconnect and operate in parallel under the South Carolina Standard.”³⁷ This testimony attempts to define the extent of applicability of the regulations—a legal question for the Commission.

Witness Xanthakos makes impermissible legal conclusions in his surrebuttal testimony as follows:

- “As I described in my direct testimony, the South Carolina Standard does not distinguish upon the type of connection, but rather upon the type of operation. That is, any generator operating in parallel with the DESC system is subject to the South Carolina Standard. Certainly, the requirement that the Generating Facility be

³² Furtick surrebuttal, page 3, l. 12-13.

³³ Furtick surrebuttal, page 4, l. 3-4.

³⁴ Furtick surrebuttal, page 5, l. 3.

³⁵ Furtick surrebuttal, page 5, l. 10-15 (emphasis in original).

³⁶ Furtick surrebuttal, page 6, l. 1-2 (emphasis in original).

³⁷ Furtick surrebuttal, page 7, l. 10-13.

‘connected directly to the same bus and share a common point of interconnection’ is simply another standard conjured by BATO that finds no support within the South Carolina Standard.”³⁸ This testimony attempts to interpret the exact language of the regulations before offering a legal conclusion as to its application to the facts at hand.

- “[T]he exact concept invoked by the South Carolina Standard...”³⁹ This testimony briefly attempts to apply the technical facts previously discussed to the regulations, making a legal conclusion as to their applicability.
- “As such, the provisions of the South Carolina Standard are not the only regulations that are binding upon DESC that mandates this type of interconnection and generation must be reviewed, at the very least.”⁴⁰ This testimony includes a statement of which regulations apply to certain factual scenarios, thus attempting to define the extent of their legal applicability—a question of law for the Commission.

Witness Hammond makes impermissible legal conclusions in his surrebuttal testimony as follows:

- “Specifically, I state my belief that the South Carolina Standard is applicable and the Generating Facility must be processed in accordance with the South Carolina Standard.”⁴¹ This testimony includes the witness’s ‘personal belief’ as to the application of the regulations to BATO, amounting to a legal conclusion as to the ultimate issue.
- “It is with this experience that I state unequivocally that the Generating Facility must be processed in accordance the South Carolina Standard before it can operate on the DESC system.”⁴² This testimony clearly states a legal conclusion as to the ultimate issue before this Commission after essentially purporting to be an expert, thus improper on multiple grounds.
- “No... Rather, this project triggers the South Carolina Standard simply because it will interconnect and operate in parallel with the DESC system—the fundamental issue in this case... I believe BATO must submit an interconnection application under the South Carolina Standard and DESC must process that application in accordance with those rules as adopted by the Commission.”⁴³ This testimony is in response to the call of the question asking for an interpretation of the legal standard and goes on to

³⁸ Xanthakos surrebuttal, page 2, l. 17- page 3, l. 2.

³⁹ Xanthakos surrebuttal, page 4, l. 7-8.

⁴⁰ Xanthakos surrebuttal, page 6, l. 18-20.

⁴¹ Hammond surrebuttal, page 4, l. 5-7.

⁴² Hammond surrebuttal, page 5, l. 9-11.

⁴³ Hammond surrebuttal, page 6, l. 1, 3-5, 7-9.

impermissibly offer a legal conclusion on the ultimate issue even while recognizing it as the “fundamental issue in the case.”

- “No. Again, BATO Witness McGavran’s novel requirement of ‘real-world’ evidence is not the standard for determining if the South Carolina Standard applies, and it is actually in direct conflict with the study and review process under the South Carolina Standard. That is, DESC cannot simply allow every generator to interconnect, operate in parallel, obtain the “real-world” evidence of such generator’s influence on the DESC system, and then decide if the project should be processed—including studied—under the South Carolina Standard.”⁴⁴ This testimony is, again, offered in response to a question which asks for a legal conclusion as to an interpretation of the regulations and attempts to define the extent of their application.
- “No. BATO Witness McGavran—again—misunderstands the fundamental principles underlying the South Carolina Standard.”⁴⁵ This testimony, again, is in response to a question which asks for an interpretation of the legal regulatory standards and is impermissible.
- “The issue is whether the Generating Facility should be processed in accordance with the South Carolina Standard, as adopted by the Commission. Put simply, the answer is yes.”⁴⁶ This testimony includes a conclusion as to the exact legal question it purports to be the issue—a task solely within the authority of the Commission.
- “This is not a concept recognized anywhere in the South Carolina Standard... Such an approach is simply not contemplated by the South Carolina Standard.”⁴⁷ This testimony asserts a legal interpretation on the extent of the regulation at issue’s coverage and applicability.
- “No. Again, BATO simply misinterprets the South Carolina Standard.”⁴⁸ This testimony offers an answer and is a response to question which calls for the conclusion as to a legal question before the PSC—whether the Solar Array is exempt from the regulations.

This testimony is inadmissible under Rules 602 and 704 and should be struck from the record.

⁴⁴ Hammond surrebuttal, page 7, l. 4-10.

⁴⁵ Hammond surrebuttal, page 8, l. 4-5.

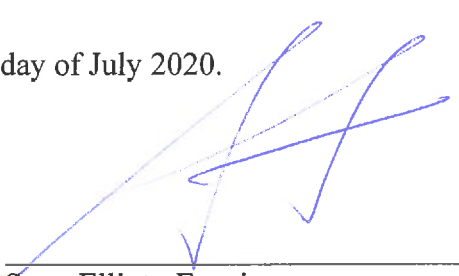
⁴⁶ Hammond surrebuttal, page 9, l. 3-5.

⁴⁷ Hammond surrebuttal, page 9, l. 20- page 10, l. 2.

⁴⁸ Hammond surrebuttal, page 15, l. 8.

WHEREFORE, having fully set forth its motion, BATO request that it, and such other and further relief as the South Carolina Public Service Commission deems just and lawful be granted.

Respectfully submitted, this the 17th day of July 2020.



Scott Elliott, Esquire
ELLIOTT & ELLIOTT, P.A.
1508 Lady Street
Columbia, SC 29201
Telephone: 803-771-0555; Fax: 803-771-8010
selliott@elliottlaw.us
Attorney for Petitioner

EXHIBIT 1



Office of Regulatory Staff
1401 Main Street
Suite 900
Columbia, SC 29201
(803) 737-0800
ORS.SC.GOV

September 27, 2019

VIA U.S. MAIL AND EMAIL

Ethan R. Ware, Esquire
Williams Mullen
1441 Main Street, Suite 1250
Columbia, SC 29201

RE: Bridgestone Americas, Inc.

Dear Mr. Ware:

This letter is in response to the inquiry and request of your client, Bridgestone Americas, Inc. ("Bridgestone"), for a determination that S.C. Code Ann. §58-27-460(A)(1) does not apply to the solar array currently installed, but not energized, at Bridgestone's Aiken County Plant.

Contrary to the statements of Dominion Energy South Carolina ("DESC"), the South Carolina Office of Regulatory Staff ("ORS") does not have the authority or jurisdiction to provide a binding opinion as to whether the Public Service Commission of South Carolina's ("Commission") South Carolina Generator Interconnection Procedures ("SCGIP") and the provisions of S.C. Code Ann. §58-27-460(A)(1) apply to your client. Only the Commission can issue such a determination or finding. Additionally, ORS lacks the ability to provide a Letter of Opinion predicting how the Commission may interpret S.C. Code Ann. §58-27-460(A)(1).

The only recommendation ORS can reasonably provide is that a filing be made with the Commission to obtain the determination that you seek.

I am providing a copy of this correspondence to Mr. Blevins, President and Chief Executive Officer for DESC.

Sincerely,

Nanette S. Edwards

cc: P. Rodney Blevins, President and Chief Executive Officer, Southeast Energy Group at
Dominion Energy

EXHIBIT 2



Henry McMaster
Governor

SOUTH CAROLINA
DEPARTMENT OF COMMERCE

Robert M. Hitt III
Secretary

April 14, 2020

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

RE: Petition of Bridgestone Americas Tire Operations, LLC for an Order Compelling
Dominion Energy South Carolina to Allow the Operation of a 1980 kW AC Solar Array as
Authorized by State Law; Docket No. 2020-63-E

To the Honorable Members of the Commission:

On behalf of the State of South Carolina, I write this letter in support of Bridgestone Americas Tire Operations, LLC's ("Bridgestone") demonstrated investment in renewable energy via its Aiken County Solar Array Project. Bridgestone's efforts to supplement a limited portion of its fossil fuel energy supply from Dominion Energy, LLC ("Dominion") with a renewable energy alternative remains stymied. Its solar array system, which was designed and built in full consultation with Dominion and its predecessor SCE&G, is specifically intended as a sole source project for Bridgestone's onsite consumption.

Despite Dominion/SCE&G's previous position to the contrary, its contention that Bridgestone's solar project must remain in the PSC's Interconnection Queue for approval as a commercial electric generation facility is arbitrary and has seemingly no basis in South Carolina law. This is certainly the case when considered within the context of the General Assembly's passage of the South Carolina Energy Freedom Act in 2019, as Bridgestone clearly outlined in its PSC petition.

Bridgestone's solar array, a significant investment long ready to be put into service, effectively, remains forcibly idled by Dominion for well over a year. The General Assembly has set forth policies designed to exclude onsite self-consuming systems from the interconnection queue process, and Bridgestone should be allowed to commence its solar array operations subject to a final safety and security review. As a longstanding South Carolina corporate citizen and job creator, Bridgestone deserves the State's best effort to facilitate a prompt and favorable resolution to this matter.

Thank you for your time and attention to this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "RMH Hitt III".

Robert M. Hitt III

RMH/km/vw